

FY2022 H-2B SWA Updates

May 26, 2022

Michigan Department of Labor & Economic Opportunity
Workforce Development



FY2022 H-2B SWA Updates

Objectives for today's webinar:

- Provide an overview of the program trends over the last five years & forecasted outlook
- Define roles of the American Jobs Center (AJC) and State Workforce Agency (SWA) in relation to H-2B Temporary Foreign Labor Applications
- Provide clarification on Temporary Final Rule effective May 18, 2022



What is the H-2B Temporary Foreign Labor Certification Program?

The H-2B temporary foreign labor certification program allows non-agricultural employers who anticipate a shortage of domestic workers to hire nonimmigrant foreign workers to the U.S. to perform non-agricultural labor or services of a temporary nature.

<https://flag.dol.gov/programs/h-2b>



Five-Year Trend

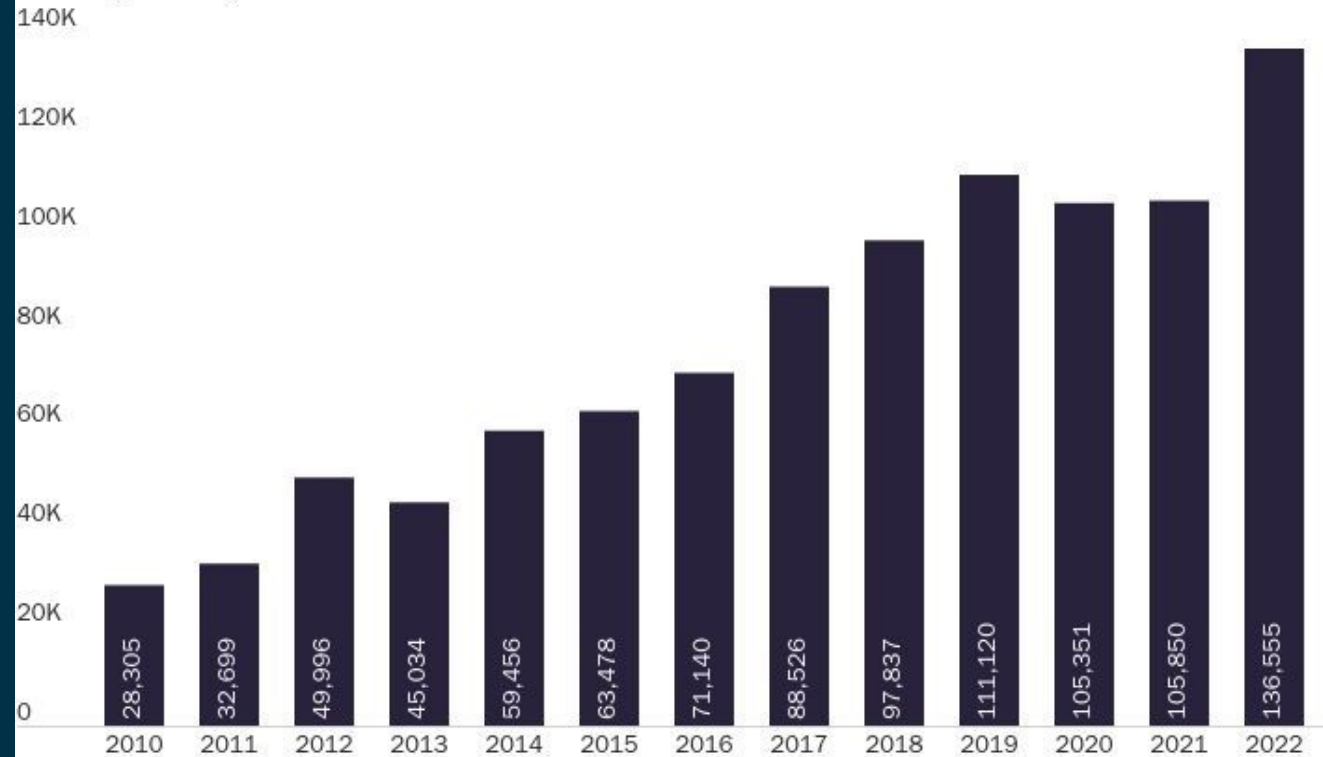
Historical trends continue to increase.

- Increase in employer applications
- Increase in variety of occupations
- Increase in number of workers requested
- Increase in number of workers certified

Figure 1

H-2B Summer Positions Requested to Be Certified (Filings for 2nd Quarter of the Fiscal Year)

FY 2010.Q2-FY2022.Q2



The AJC Role

The role of the AJC or in this case Michigan Works! Agency, is to assist employers petitioning for H-2B workers:

- To post a job on the state's Labor Exchange System.
- To promote job opportunities with the AJC partner network, and to job seekers who may be qualified U.S. workers to fill the job vacancy.
- To recruit and refer qualified U.S. workers to the job vacancy.
- To receive and enter Employment Service Related or Employment-Law Related complaints from workers through the Complaint System.

Role of the SWA

The role of the SWA is to:

- Review the job posting
- Communicate with employers (as needed)
- Communicate with the U.S. DOL Office of Foreign Labor Certification (OFLC)
- Coordinate with AJCs



Role of the Employer

The role of the employer is to attempt to recruit U.S. workers to fill the job opportunity.

- Post job on PMTC
- Deactivate job order pending Notice of Acceptance (NOA)
- Activate job order after receiving NOA
- Deactivate job posting per regulations



H-2B Worker Admission & Limitations of Stay

Current regulations allow foreign workers authorized to enter the U.S. under the H-2B visa:

- To be admitted to the U.S. 10 days before the employment start date.
- Allows H-2B workers to remain in the U.S. for up to three years.
- Dependent spouse and children may be issued an H-4 Visa to accompany H-2B visa workers to the U.S.
- H-2B visa workers may remain in the U.S. for 10 days upon concluding the work assignment.
- Per a Temporary Final Rule effective May 14, 2020, H-2B workers were authorized to begin work with a new H-2B employer petitioner for up to 60 days pending certification.

The Temporary Final Rule Changes

The Temporary Final Rule issued May 18, 2022, implements the following changes.

- Employers filing an H-2B petition 30 or more days after the certified start date on the TLC, must attest to engaging in the following additional steps to recruit U.S. workers.
- Post a job order on PMTC for at least 15 calendar days.
- Contact the AJC in the locality for the place of employment for assistance with recruitment and referral of qualified U.S. workers.
- Employers must contact former employees (U.S. workers) to inform them of the available job opportunity.

The Temporary Final Rule Changes - Continued

- Hire any qualified U.S. worker who applies or is referred for the job until the later of:
 - The date on which the last H-2B worker departs for the place of employment, or
 - 30 days after the last date of the job order is due to expire.
- Where the occupation is traditionally unionized, the employer must provide written notification to the appropriate Union or AFL-CIO office requesting assistance to recruit qualified worker(s).

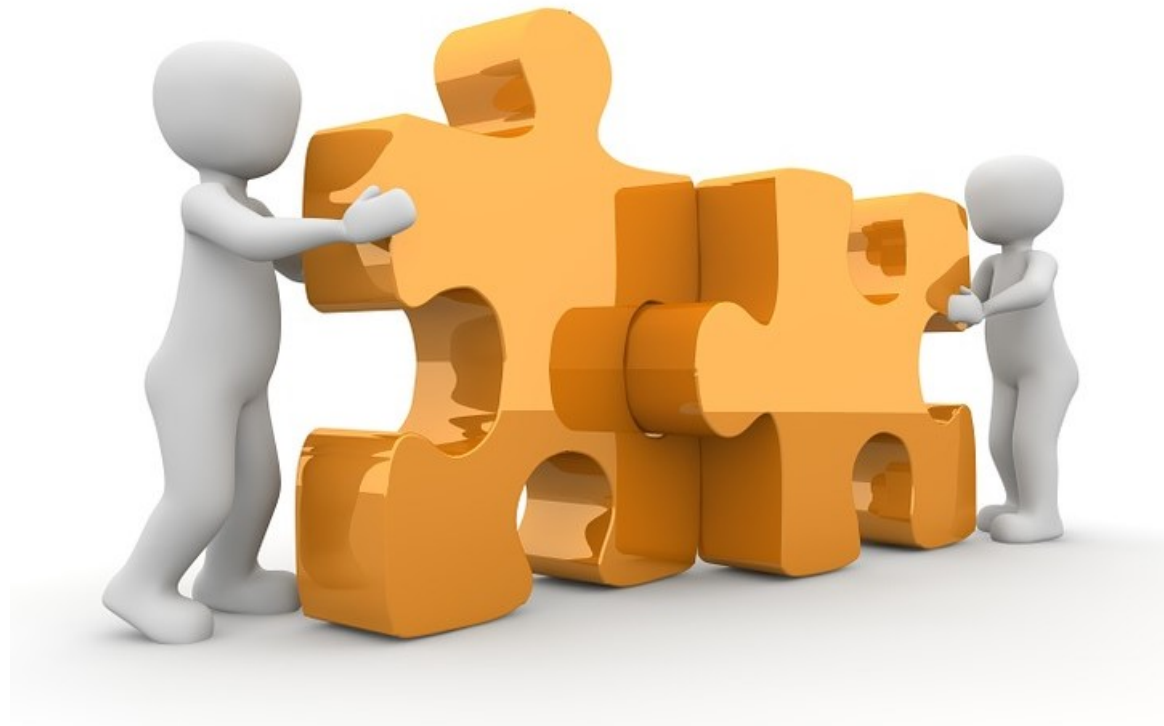
H-2B Portability Flexibility

- Effective 7/28/2022 and expires 1/24/2023.
- H-2B visa workers may remain in the U.S. and begin work with another H-2B employer upon concluding their previous H-2B work assignment.

Partnership

We're in this together!

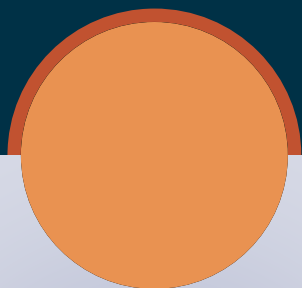
- Supporting businesses
- Employing workers
- Supporting the Economy



Office of Foreign Labor Services

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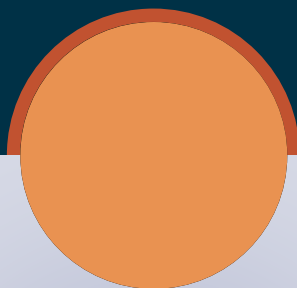
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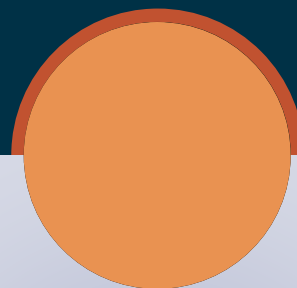
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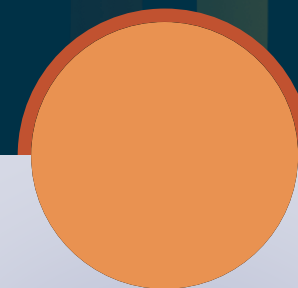
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